

Rock Corporation
Lexington, Massachusetts

23 JAN 1961

4133(657)9349

Gentlemen:

1. Introductory Paragraph.

An order is hereby placed with the Contractor for the furnishing to the Government of the supplies or services set forth in Exhibit "A" attached hereto and hereby made a part hereof.

2. Direction To Proceed.

Except as otherwise expressly provided to the contrary herein, the Contractor is directed, upon its acceptance of this order, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.

3. Contract Clauses Incorporated by Reference.

(a) The provisions of the contract clauses set forth in the following paragraphs of the Armed Services Procurement Regulation in effect on the date hereof, and the additional clauses which are made a part of this letter contract in Exhibit "A", are hereby incorporated into this letter contract by reference, with the same force and effect as though herein set forth in full:

7-103.1 (Definitions); 7-203.2 (Changes); 7-203.5 (Inspection); 7-103.8 (Assignment of Claims); 7-103.13 (Renegotiation); 7-203.7 (Records); 7-203.8 (Subcontracts); 7-104.14 (Utilization of Small Business Concerns); 7-103.12 (Disputes); 6-104.5 (Buy American Act); 12-203 (Convict Labor); 12-303.1 (Eight-Hour Law of 1912 - Overtime Compensation); 12-604 (Walsh-Healey Public Contracts Act); 12-802 (Nondiscrimination in Employment); 7-103.19 (Officials Not to Benefit); 7-103.20 (Covenant Against Contingent Fees); 13-503 (Government Property); 7-203.22 (Insurance - Liability to Third Persons); 7-104.12 as modified by 7-204.12 (Military Security Requirements); 7-104.16 (Gratuities); 7-104.18 (Priorities, Allocations and Allotments); 9-104 (Notice and Assistance Regarding Patent Infringement); 9-106 (Filing of Patent Applications); 9-102.2 (Authorization and Consent - R&D); 9-107.2 (Patent Rights); 9-203.1, 9-203.2, 9-203.3 and 9-203.4 (Data);

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6-403 (Soviet Controlled Areas); 7-104.4 (Notice to the Government of Labor Disputes) 7-104.20 (Utilization of Concerns in Labor Surplus Areas); and 8-708 (Excusable Delays); 7-104.22 (Defense Subcontracting Small Business Program); 12-102.3(c) (Payment for Overtime and Shift Premiums).

(b) Reference in any of the clauses enumerated above to contract costs or adjustments in fixed fee, if any, and delivery schedules to the extent such are not specifically included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated herein.

4. Provision for Definitizing Contract.

By the Contractor's acceptance hereof, it undertakes, without delay, to enter into negotiations with the Government looking to the execution of a definitive contract which will include the clauses enumerated above and such other clauses as may be mutually agreeable. The definitive contract will also contain a detailed delivery schedule, estimated cost, fixed fee, if any, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be executed prior to 31 August 1962, and will be a cost-reimbursement-type contract. (Rev. No. 10, 7/25/58).

5. Termination.

(a) In case a definitive contract is not executed by the date specified in the clause hereof entitled "Provision for Definitizing Contract," because of the inability of the parties to agree upon a definitive contract, this order may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice. (Rev. No. 13, 10/22/58; Rev. No. 36, 9/20/60).

(b) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract

is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the referenced clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this clause; (6) transfer title to and deliver to the Government, in the manner, at the times and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if this order had been completed, would be required to be furnished to the Government; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provisions (6) of this paragraph: Provided, however, That the Contractor (1) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: And provided further, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this order which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in section VIII, Armed Services Procurement Regulation, or as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may

request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: Provided, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may remove and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit a termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined. (Rev. No. 18, 3/27/59).

(e) Subject to the provision of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) or (b)(1) hereof, such amount or amounts shall not include any allowance for profit or fee. In the event of any termination pursuant to paragraph (b)(2) hereof, such amount or amounts may include a reasonable allowance for profit or fee, but only on work actually done in connection with the terminated portion of this order. (Rev. No. 13, 10/22/58). Any such amount shall not exceed the amount set forth in the clause hereof entitled "Authority to Obligate Funds." Any such agreement shall be embodied in an amendment to this order and the Contractor shall be paid the agreed amount. (Rev. No. 18, 3/27/59).

(f) If the Contractor and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph (e) hereof, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, The Contracting Officer, without duplication of any amounts agreed upon in accordance with the above-cited paragraph (e), shall subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement

Regulation in effect as of the date of execution of this contract pay to the Contractor an amount determined in accordance with the applicable cost principles of the Armed Services Procurement Regulation. In the event of the termination of this order pursuant to paragraph (a) hereof, no allowance for fee or profit shall be included in the amount to be paid the Contractor. (Rev. No. 18, 3/27/59).

(g) The Contractor shall have the right of appeal, under the clause entitled "Disputes" incorporated in this order by reference, from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any dispute as to whether termination has in fact taken place pursuant to Par. (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) hereof and has failed to request extension of such time, the Contractor shall have no such right of appeal. If any case when the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due to the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: Provided, however, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition.

(j) Unless otherwise provided in this contract or by applicable statute, the Contractor, from the effective date of termination and for a period of 3 years after final settlement under this order, shall preserve and make available to the Government, at all reasonable times at

the office of the Contractor without direct charge to the Government, all books, records, documents, and other evidence bearing on the cost and expenses under this order and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof. (Rev. No. 36, 9/20/60).

6. Authority to Obligate Funds.

The maximum amount for which the Government shall be liable if this contract is terminated is \$ _____, and any expenditure or obligation by the Contractor in excess of that amount, in furtherance of performance hereunder, shall be at the Contractor's own risk.

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7. Provisions for Execution.

The Contractor's acceptance of this order will be indicated by affixing its signature to the original and two copies thereof and returning the original and one executed copy to the Contracting Officer. The remaining copy shall be retained for your files. Such acceptance will constitute this order a contract on the terms set forth herein.

THE UNITED STATES OF AMERICA

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TITLE Contracting Officer

ACKNOWLEDGED AND ACCEPTED

Itek Corporation (Affix Corporate Seal)
(Contractor)

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DATE 13 July 1962